

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEED COMPANY LIMITED and
SHIGERU TAMAI,

Appellants,

v.

WILLIAM F. WESTERMAN, et al.,

Appellees.

Case No. Case # 14-7126

**JOINT PROPOSAL OF ALL PARTIES
REGARDING FORMATS FOR THE BRIEFING**

Pursuant to this Court's Order on December 11, 2014, all parties to this appeal submit the following proposed briefing format.

Issues to Be Briefed

The U.S. District Court dismissed on summary judgment all claims asserted by Plaintiffs/Appellants Seed Company Limited and Shigeru Tamai (collectively "Seed"). Seed filed the only notice of appeal, and no cross-appeals have been filed. However, two of the Defendants/Appellants have raised an issue by motion to dismiss, and certain other Defendants/Appellants have indicated that they plan to brief an alleged statute of limitations defense as an additional basis for affirming

the District Court's Judgment. Further, this Court requested that the parties brief this Court's jurisdiction over this matter. Thus, a total of four broad issues may be addressed during the briefing:

Issue #1: Whether the District Court erred in entering Summary Judgment against Seed by finding that the Kratz Defendants (defined below) and Westerman Group 1 Defendants (defined below) did not commit legal malpractice in 1997 as a matter of law?

Issue #2: Whether Seed's claims are barred by the three-year statute of limitations for legal malpractice claims?

Issue #3: Whether Seed's post-1997 malpractice claims against the Westerman Group 2 Defendants (defined below) are moot on appeal?

Issue # 4: Does this Court have jurisdiction over this matter?

Alignment of the Parties

Certain parties are aligned in interest as explained below:

1. "Seed." Plaintiffs/Appellants Seed Company Limited and Shigeru Tamai (collectively "Seed") are aligned for all purposes relating to this appeal.

2. "Kratz Defendants." The following Defendants/Appellees are aligned with each other for all purposes relating to this appeal: Kratz, Quintos & Hanson, LLP; Armstrong, Kratz, Quintos, Hanson & Brooks, LLP; Armstrong,

Westerman & Hattori, LLP; Armstrong, Westerman, Hattori, McLeland & Naughton, LLP; and the Estate of James Armstrong III (collectively, the “Kratz Defendants”). In addition, the Kratz Defendants are aligned with the Westerman Group 1 Defendants until October 1, 2003 with regard to the alleged liability for malpractice that occurred in 1997, with the exception of the applicability of any tolling agreements.

3. “Westerman Group 1 Defendants.” The following Defendants/Appellees are aligned with each other for all purposes relating to this appeal: William Westerman and John Kong (collectively, the “Westerman Group 1 Defendants”). In addition, the Westerman Group 1 Defendants are aligned with the Kratz Defendants until October 1, 2003 with regard to alleged liability for malpractice that occurred in 1997. After October 1, 2003, however, because Westerman and Kong, unlike the Kratz Defendants, continued to represent Seed on appeal before the Federal Circuit, they are the only defendants that need to address whether the continuous representation rules applies to the statute of limitations defense. Except for the continuous representation issue, the Westerman Group 1 Defendants are otherwise aligned with the Westerman Group 2 Defendants regarding the post-1997 malpractice claims.

4. **“Westerman Group 2 Defendants.”** The following Defendants/Appellees are aligned with each other with regarding to the alleged malpractice that occurred after 1997: Westerman, Hattori, Daniels & Adrian, LLP and Edward Kenehan (collectively, the “Westerman Group 2 Defendants”). The Westerman Group 2 Defendants filed a motion to dismiss the claims against them as moot (Document #1513889).

Proposed Briefs and Lengths

Based upon the foregoing, the parties propose the following briefing format:

1. Seed shall file an opening brief of no more than 14,000 words addressing Issues #1 and #4.
2. The Kratz Defendants shall file an Opposition brief of no more than 14,000 words addressing issue #2 as an additional basis for affirmance and issue #4. To avoid duplication, the Kratz Defendants anticipate joining the arguments of the Westerman Group (1 and 2) with respect to issue #1.
3. The Westerman Group 1 Defendants and the Westerman Group 2 Defendants shall file a brief of no more than 14,000 words addressing Issues #1, #2, only with respect to the continuous representation rule concerning the Westerman Group 1 Defendants, and #3.

4. Seed shall file a combined Opposition/Reply brief of no more than 14,000 words responding to the briefs of the Defendants.

The parties submit that the foregoing is fair and reasonable because the Kratz Defendants and the Westerman Group 1 Defendants are aligned in interest as to Issue #1, which is the issue relied upon by the District Court in dismissing all of Seed's claims on summary judgment. Moreover, the Westerman Group 2 Defendants have no knowledge of what occurred in 1997, which is before the time they began representing Seed in the underlying proceedings. Since there is no need for each Defendant or each group of Defendants/Appellees to respond separately to the arguments in Seed's opening brief, the combined 28,000 words allotted to Defendants/Appellees are adequate to respond to Seed's Opening brief and to brief Issues #2, #3, and #4, while avoiding duplicative briefing. Seed will need to respond or reply regarding all four issues in its second and final brief (Brief #4).

Respectfully submitted this 12th day of January, 2015.

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CERTIFICATE OF SERVICE

I certify that on this 12th day of January, 2015, I electronically filed the foregoing “Joint Proposal of All Parties Regarding Formats for the Briefing” with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system, which automatically served all counsel of record in this case.

/s/ Creighton R. Magid

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